

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>CENTRAL ILLINOIS LIGHT COMPANY</b>	)	
<b>d/b/a AmerenCILCO</b>	)	
	)	<b>No. 05-0160</b>
<b>Proposal to implement a competitive</b>	)	
<b>procurement process by establishing</b>	)	
<b>Rider BGS, Rider BGS-L, Rider RTP,</b>	)	
<b>Rider RTP-L, Rider D and Rider MV</b>	)	
 <b>CENTRAL ILLINOIS PUBLIC SERVICE COMPANY</b>	 )	
<b>d/b/a AmerenCIPS</b>	)	
	)	<b>No. 05-0161</b>
<b>Proposal to implement a competitive</b>	)	
<b>procurement process by establishing</b>	)	
<b>Rider BGS, Rider BGS-L, Rider RTP,</b>	)	
<b>Rider RTP-L, Rider D and Rider MV</b>	)	
 <b>ILLINOIS POWER COMPANY</b>	 )	
<b>d/b/a AmerenIP</b>	)	
	)	<b>No. 05-0162</b>
<b>Proposal to implement a competitive</b>	)	
<b>procurement process by establishing</b>	)	
<b>Rider BGS, Rider BGS-L, Rider RTP,</b>	)	
<b>Rider RTP-L, Rider D and Rider MV</b>	)	<b>Consolidated</b>

**REPLY OF THE PEOPLE OF THE STATE OF ILLINOIS,  
THE CITIZENS UTILITY BOARD, AND  
ENVIRONMENTAL LAW AND POLICY CENTER OF THE MIDWEST  
REGARDING THEIR MOTION IN LIMINE TO EXCLUDE TESTIMONY  
REGARDING THE POST 2006 WORKSHOPS**

The People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, the Citizens Utility Board, and the Environmental Law and Policy Center (“Movants”), by and through their attorneys, reply to the responses to their Motion filed by the Ameren Companies, Commonwealth Edison, the Staff of the Illinois Commerce Commission (Staff) and the Competitive Energy Suppliers as follows:

1. Responding parties attempt to differentiate between reports about the Post 2006 Initiative workshops and statements attributing specific statements to individuals, companies or organizations. The Commission must reject this purported distinction. The Preamble to the Post 2006 Initiative says that statements made in the workshops cannot be used “by the stakeholders” in “any subsequent litigation.” The Preamble does not say that such statements can be used so long as they are not attributed to a particular party, or that they can be used for some purposes but not for others. The Preamble provides a bright line: do not use the Post 2006 Initiative in subsequent litigation.
2. There is no question that the testimony and witnesses sponsored by responding parties referred to the Post 2006 Initiative discussions, statements, and reports in this docket. These references, whether they are attributed to specific parties or individuals, are being used in subsequent litigation to advance the positions of some parties and to argue that other parties’ positions should be rejected. Even without specific attribution, these references to the Post 2006 Initiative process prejudice the parties who are not in agreement with other parties’ impressions or reports of the process.

3. Responding parties also argue that it would be “absurd” to ignore the Staff and working groups reports because the reports are public documents. The reports are products of a process where parties were encouraged to participate with the promise that the statements and documents produced would not be used in litigation. Notwithstanding that the reports are public, their use was restricted in connection with subsequent litigation because they are based on statements and positions taken by the participants in the Post 2006 Initiative workshops. It is impossible to segregate the reports from the workshop discussions because those discussions are the very foundation of the reports. Those discussions were not to be used in subsequent litigation, and the reports based on those discussions should be similarly restricted.
4. Parties who do not agree with the final report are prejudiced from the use of the reports just as they would be prejudiced by the use of other Post 2006 Initiative statements, by being portrayed as recalcitrant or outside the “consensus.” The reports, no less than a statement specifically attributed to an individual or organization, can be and are being used as both a sword and a shield to discredit parties who are critical of the proposed auction that Ameren and other parties present in this docket. It is one thing to challenge a party’s position on the

merits, and quite another to mock it as not being consistent with a “consensus” or a report that stemmed from a process that promised participants protection from the use of the process in subsequent litigation.

5. Commonwealth Edison argues that only “non-consensus” items are protected, and suggests that Movants intentionally ignored documents that purport to limit the Preamble protections by adding limitations and exceptions that were not part of the Commission’s Preamble. The promise the Commission made at the inception of the Post 2006 Initiative process was clear and unequivocal. Statements by convenors or other parties that attempted to dilute that promise through conditions and limitations cannot be used as unilateral, after-the-fact modifications of the ground rules set for the Post 2006 Initiative process. The promise in the Preamble cannot be changed by later qualifications any more than the terms of a contract can be amended by one party after the other party has accepted the contract and relied on it.
6. Finally, some parties respond that Movants’ motion came too late to be considered. Movants filed their motion in this docket (and in the companion docket 05-0159) at the inception of hearings, before the witnesses were cross-examined, and before the evidence was admitted to the record. By filing a

written motion, Movants gave the responding parties the advantage of responding in writing, as opposed to making a response to an oral motion at the hearings, which would also have been appropriate. Further, striking or excluding testimony and exhibits from the Post 2006 Initiative should not change the parties testimony where they present independent and substantive arguments in support of their position. The Commission should reject the argument that responding parties are somehow prejudiced by the timing of the Motion.

## **CONCLUSION**

Based on the foregoing, Movants respectfully request that the Commission grant their Motion *in limine* and (1) exclude (or strike if the evidence has already been admitted) from the record any and all testimony regarding the Commission-sponsored Post 2006 Initiative workshops, as identified in Attachments A and B to the Motion, and (2) grant such other and further relief as is just and reasonable to protect participants in the Post 2006 Initiative and to enforce the Commission's promise that the Post 2006 Initiative would not be used in subsequent litigation.

Respectfully submitted,

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